

**TOWN OF HARPSWELL
HARBOR AND WATERFRONT ORDINANCE
ENACTED MARCH 9, 1991
AMENDED MARCH 14, 1992
AMENDED MARCH 12, 1994 EFFECTIVE JANUARY 1, 1995 ART. 18
AMENDED MARCH 11, 1995 ART. 26
AMENDED MARCH 16, 1996 ART. 30
AMENDED MARCH 6, 1999 ART. 19
AMENDED MARCH 8, 2003 ART. 78
AMENDED MARCH 11, 2006 ART. 20
AMENDED MARCH 8, 2008 ART. 7
AMENDED MARCH 12, 2011 ART. 18
AMENDED MARCH 9, 2013 ART. 9**

Section 1 PURPOSE

The Town of Harpswell Harbor and Waterfront Ordinance is hereby established to regulate marine activities within the Town, to ensure the safety of its property, its inhabitants and the general public, to guarantee the availability and use of a valuable public resource, and to create a fair and equitable framework for administration of these goals.

Section 2 AUTHORITY AND ADMINISTRATION

2.1 Authority

- 2.1.1 This Ordinance is adopted pursuant to Home Rule Powers as provided for in Article VII-A of the Maine Constitution and 30-A M.R.S.A., Chapter 187, Subchapter IV, as the same may be amended from time to time.
- 2.1.2 This Ordinance is also adopted pursuant to Title 38 M.S.R.A. Chapter 1, Subchapter 1, as the same may be amended from time to time. All provisions of Title 38 M.R.S.A. Chapter 1, Subchapter 1, as may be amended from time to time, are adopted as part of this Ordinance, except to the extent its provisions are inconsistent with the expressed terms herein.
- 2.1.3 This Ordinance shall be known as the Town of Harpswell Harbor and Waterfront Ordinance, and shall govern specified activities within the limits of the Town of Harpswell.

2.2 Administration

This Ordinance shall be administered by the Harbormaster and Selectmen of the Town of Harpswell, who may be assisted by a Harbor and Waterfront Committee (“the Committee”).

2.3 Severability and Separability

Should any section or provision of this Ordinance for any reason be held void and invalid it shall not affect the validity of any other section or provision.

2.4 Designations of Gender, Singular and Plural

- 2.4.1 Wherever the masculine gender is used herein, it shall be construed to include the feminine.
- 2.4.2 Wherever the singular is used herein, it shall be construed to include the plural.

Section 3 CLASSIFICATION OF WATERS

3.1 Classification

All the waters of Harpswell shall be classified by affirmative vote at a Town Meeting as either Harbors, Anchorages, or Open Coastline.

3.2 Classifications Plan

3.2.1 The classification of areas shall be recorded on a map of the Town, hereinafter referred to as the Waters Classification Plan, prepared for that purpose and maintained by the Committee. Copies of the Plan may be made from time to time and may be distributed, but the official copy shall be that maintained by the Committee. A copy of the current Plan shall be filed at the Town office and made available for viewing by the Public upon request.

3.2.2 The Classifications of Harpswell waters shall be placed on the Waters Classification Plan and adopted at a Town Meeting.

3.3 Change in Classifications

3.3.1 Requests for changes in classifications shall be presented in writing to the Committee, and the Committee shall transmit the requested change to a Town Meeting with its recommendation either for approval or rejection by those voting at such Town Meeting.

3.3.2 All classification changes must be approved by affirmative action of a Town Meeting, either at the Annual Meeting or at a Special Meeting called for that purpose.

3.3.3 A record of all adopted modifications to the Waters Classification Plan indicating the date of the change(s), the reason for the recommended change(s), and the specifics of the change(s) shall be maintained by the Committee.

Section 4 DEFINITIONS

4.1 Abandoned Moorings

A mooring in Harpswell waters shall be considered abandoned unless it is currently registered with the Town and a valid permit number is clearly painted or burned on the mooring buoy. In addition, any registered mooring that is installed but unused for 365 days by the owner or his family or any registered mooring that is not installed within 365 days of the date of registration shall also be considered abandoned.

4.2 Abandoned Vessel

Any vessel which is unattended and determined by the Harbormaster to constitute a hazard to navigation, or which is sinking or already sunk, or which is stranded on any property without the permission of the owner of the property.

4.3 Anchorage

All areas within the waters of Harpswell specifically designated as Anchorage or Special Anchorage on the Waters Classification Plan. (For use as mooring areas but have no clear Zones or buffer zones specifically designated).

4.4 Closed Harbor

A mooring area determined by the Harbormaster to have reached or is reaching capacity.

4.5 Commercial Fishing Vessel

Any vessel used primarily to generate income through fishing.

4.6 Commercial Vessel

Any vessel used primarily to generate income.

4.7 Float Moorings

Floats that are used for business or recreation, not secured to the shore but held in place by mooring/moorings.

4.8 Harbor

All areas within the waters of Harpswell which have been classified as Harbors on the Waters Classification Plan and which have clear zones, buffer zones, mooring locations, etc. specifically established.

4.9 Harbormaster

The person appointed to serve as such by the Board of Selectmen.

4.10 Marine Related Business

A business establishment that must have direct access to navigable water in order to function, such as marinas, water-borne transportation facilities, and finfish and shellfish processing facilities, but excluding commercial fishing vessels. This definition is provided only for the purpose of this Ordinance and is not a definition of the term for the purposes of any other ordinance or plan approved by the Town.

4.11 Mooring

An anchoring device not carried aboard a vessel as regular equipment.

4.12 Mooring Buoy

A floating device designed to mark a mooring location.

4.13 Non-Resident

Any individual who does not maintain a legal residence within the Town of Harpswell.

4.14 Non-Resident Taxpayer

A non-resident who pays real estate taxes to the Town of Harpswell.

4.15 Open Coastline

All areas within waters of Harpswell not defined as Anchorage or Harbor pursuant to Sections 4.3 and 4.8.

4.16 Point of Access

An upland area in Harpswell from which access to the water is achieved.

4.17 Rental Mooring

A mooring that is leased or rented to a person other than the holder of the mooring registration.

4.18 Resident

An individual who maintains a legal residence in the Town of Harpswell.

4.19 Shorefront Owner

An owner of a parcel of land, as that term is defined in Title 38 M.R.S.A. § 11(2), as may be amended from time to time, contiguous to waters of Harpswell.

4.20 Town Wharf, Dock or Float

A wharf, dock or float owned and maintained by the Town of Harpswell.

4.21 Town Landing

An area of land contiguous to waters of Harpswell which is owned by the town of which is impressed with a public right of access.

4.22 Vessel

A vessel shall include boats of all sizes powered by sail, machinery or by hand; scows; dredges, and craft of any kind.

4.23 Waters of Harpswell

All waters below the ordinary high tide mark and extending seaward three miles from the shoreline of property located within the boundaries of the Town of Harpswell.

Section 5 MOORING REGISTRATION AND REGULATIONS

5.1 Registration

5.1.1 All moorings located below low water line in waters of Harpswell shall be registered with the Town Clerk before May 1 of each year. For renewal moorings re-registered after May 1, the mooring fee will be doubled.

5.1.2 Requirements for New and Renewal Mooring Registration

Applicants for a new mooring registration must submit a completed application form to the Town Clerk on forms available in the Town Clerk's Office. Applicants for a renewal mooring registration need only submit a new completed form to the Town Clerk if there are any changes to the registration from the prior year, including change of vessel.

5.1.3 Categories of Mooring Registration

- 5.1.3.1 Resident /Non-Resident Taxpayer
- 5.1.3.2 Non Resident
- 5.1.3.3 Rental Mooring
- 5.1.3.4 Float Mooring

5.1.4 Registration Fees

The registration fee shall be in the amount determined by the Board of Selectmen in accordance with Title 38 M.R.S.A. § 7-A(2), as may be amended from time to time. The registration fee schedule shall be available at the Town Office.

5.1.5 Unregistered Moorings

If any moorings in the waters of Harpswell are unregistered after May 1, the Town Clerk shall notify the owner. If registration is not completed within thirty (30) days of the date of notice, the Harbormaster may have the mooring removed at the expense of the mooring owner.

5.1.6 Permit Stickers

Upon successful registration, the Town Clerk shall issue a permit sticker showing the year and permit number that is to be attached to the mooring buoy. In addition, the permit number must be painted or burned onto the mooring buoy in a legible manner with numbers at least 3 inches tall. Mooring buoys without the mooring permit number properly displayed shall be considered abandoned.

5.2 Assignment of Mooring Space

- 5.2.1 A permitted mooring shall be assigned a location in Harpswell waters by the Harbormaster on a first-come first served basis as space permits with due regard to navigation and the safety of persons and property, and, where feasible, the prior year's location. New mooring permits will not be issued for a mooring that is located more than one-half mile from the applicant's point of land access in Harpswell.
- 5.2.2 If there is insufficient space to assign allocations for all registered moorings in the location requested, the harbor will be considered closed. The applications not assigned mooring locations shall be placed on a waiting list which will be maintained by the Town Clerk, posted and available for inspection in the Town Office.
- 5.2.3 Any applicant who completes re-registration by May 1 of any year shall be given preference for the location occupied by the registrant's mooring the prior year, unless the Harbormaster determines that a demonstrated need for that location has been shown by someone higher on the list of priorities in Section 5.2.4 below. In such an event, after consultation with the original registrant, the Harbormaster will provide a new location and relocate the mooring, in the same

condition it was in at its original location, at the expense of the new mooring owner being assigned the original registrant's location.

- 5.2.4 As space in closed Harbors and Anchorages of the waters of Harpswell becomes available, assignments of mooring locations shall be made from the waiting list in accordance with the terms of Title 38 M.R.S.A. § 7-A(2), as may be amended from time to time, on the basis of the date of the applicant's request and with the following priorities:

5.2.4.1 Shorefront Owner with respect to an initial location adjacent to the owner's shore frontage, including owners of lawfully created lots who, prior to January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of the size of the lot;

5.2.4.2 Resident Commercial Fisherman;

5.2.4.3 Resident Marine Related Business

5.2.4.4 Resident Recreational;

5.2.4.5 Non-Resident Taxpayer;

5.2.4.6 Non-Resident Commercial Fishermen

5.2.4.7 Non-Resident Marine Related Business

5.2.4.8 Non-Resident Recreational.

- 5.2.5 Rental Moorings

No mooring shall be used as a rental mooring without first registering it with the Town and obtaining a permit from the Army Corps of Engineers.

- 5.2.6 Float Moorings

Float moorings shall be registered with the Town and be permitted by the Army Corps of Engineers.

- 5.2.7 Transfer of Moorings

Moorings may be sold or transferred at the discretion of the owner. However, the mooring location or assignment may not be bought, sold, or otherwise transferred unless it is a transfer of a mooring assignment used for commercial fishing purposes. A mooring assignment used for commercial fishing purposes may be only be transferred as follows:

- at the request or death of the assignee;
- to a member of the assignee's family; and
- if the mooring assignment will be continued to be used for commercial fishing purposes.

For the purposes of this subsection, "member of the assignee's family" means an assignee's parent, child, or sibling by birth or by adoption, including a relation of half blood or an assignee's spouse. The Harbormaster shall be notified of transfers for commercial fishing purposes within thirty (30) days of the transfer.

- 5.2.8 Relocation of Moorings

When any mooring within the waters of Harpswell is located such that hazard to other property is inherent due to its position, the Harbormaster shall arrange for the relocation of the mooring or moorings involved whenever he is notified of the

hazard. Any expense to the Town relating to the relocation of moorings shall be reimbursed by the owners.

5.3 Removal of Abandoned Moorings

When the Harbormaster has determined that a mooring is abandoned, he shall tag the mooring buoy. He shall record the date of the determination, location of the mooring, and, if possible, the name of the owner in his records. He shall notify the owner of the abandonment and order the owner to remove the mooring within thirty (30) days of the date of the notice. If the mooring is not removed, the mooring buoy appropriately marked or re-registered within the applicable thirty (30) day period, it may be removed or dropped by the Harbormaster at the expense of the owner in accordance with the provisions of Title 38 M.R.S.A., § 4, as may be amended from time to time. Nothing in this Section shall impede enforcement (Section 8.1.7) or collection of penalties (Section 8.2).

5.4 Removal of Abandoned Vessels

Except where the vessel constitutes an immediate hazard to public health, safety and welfare, the Board of Selectmen shall notify the owner of an abandoned vessel of his duty to remove any abandoned vessel within thirty (30) days of the date of the notice. If the vessel is not removed within the applicable thirty (30) day period, it may be removed by the Harbor Master at the expense of the owner in accordance with the procedures of Title 38 M.R.S.A. § 5, as may be amended from time to time. Where the Board of Selectmen determines that the abandoned vessel constitutes a threat to public health, safety and welfare, it may authorize the Harbor Master to remove the vessel immediately and without notice at the expense of the owner. Nothing in this Section shall prevent the Town from enforcing Section 8.1.5 or from collecting penalties (Section 8.2).

Section 6 HARBOR AND WATERFRONT COMMITTEE

6.1 Committee Make-up

The Harbor and Waterfront Committee shall be comprised of seven members, appointed by the Board of Selectmen.

6.2 Terms of Office and Positions

6.2.1 At the time of adoption of this Ordinance, the Board of Selectmen shall designate two members of the Committee to have terms of office expiring at the end of one year, two members to have terms of office expiring at the end of two years, and three members to have terms of office expiring at the end of three years.

6.2.2 Thereafter, as normal terms of office expire, appointments to the Committee shall be for three year terms, thus guaranteeing continuity of the Committee and its work.

6.2.3 The committee shall annually, at the first meeting after the Board of Selectmen has appointed the members, elect a Chairman, a vice-chairman, and a secretary from among its own members. Those so elected shall take office at the close of the meeting and shall continue in office until the next annual election. Should the chairman's position become vacant, the vice-chairman shall succeed to that position, Should other duly elected positions become vacant, the chairman will fill them by appointment.

- 6.2.4 Should any Committee Member's position become vacated, a replacement shall be appointed by the Board of Selectmen to serve out the remainder of the term of the member being replaced.
- 6.2.5 Upon the written recommendation of the Committee, the Board of Selectmen may request the resignation of an inactive or disruptive Committee member and take the necessary steps for replacement.
- 6.2.6 Should a vacancy occur within three months of a normal term expiration the Board of Selectmen, at its discretion, may either leave the position vacant for the remainder of the unexpired term, or appoint a new member whose term will run for three years plus the unexpired remainder.
- 6.3 Duties and Responsibilities
 - 6.3.1 The Committee shall act as an advisory Board to Harbormaster and the Board of Selectmen on all matters pertaining to Harbors, Anchorages and the Waterfront.
 - 6.3.2 The Committee shall monitor the activities of the Harbormaster and his care, custody and management of Town Landings, harbors, Anchorages and their facilities and, from time to time, make recommendations to the Board of Selectmen.
 - 6.3.3 The Committee shall work closely with the Harbormaster to ensure that his duties are carried out as intended by this Ordinance, Title 38 M.R.S.A. Chapter I and other applicable statutes. Suggestions for improvements or other change (s) in Committee responsibilities shall be discussed with and approved by vote of the Board of Selectmen before being adopted.
 - 6.3.4 The Committee shall serve as a Board of Appeals for decisions made by the Harbormaster under this Ordinance.
 - 6.3.5 The Secretary shall keep an accurate record of all of the Committee's proceedings and shall provide the Board of Selectmen with copies of the minutes of all meetings, and also with an Annual Report prepared in time for inclusion in the Annual Town Report.

6.4 Compensation

- 6.4.1 Committee Members shall serve without compensation.
- 6.4.2 Committee Members shall be reimbursed for any expenses incurred with the prior approval of the Board of Selectmen.

Section 7 THE HARBORMASTER, DEPUTY HARBORMASTER(S) AND ASSISTANT HARBORMASTERS – QUALIFICATIONS AND SALARY

7.1 Harbormaster Appointment

The harbormaster shall be appointed by the Board of Selectmen and shall be subject to their control and supervision. The Harbormaster shall serve in that capacity until discharged by the Board of Selectmen or until resignation.

7.1.1 Deputy Harbormaster(s)

Deputy Harbormasters will serve only in certain designated areas of the Town's waters, and will report directly to the Harbormaster who will define and limit his responsibilities. Where the term "Harbormaster" is used throughout the remainder of this Section 7, it shall also include "Deputy Harbormaster" except as may be limited or restricted by the Harbormaster himself, and also excluding Section 7.6 – Meetings. Deputy Harbormasters are not required to attend meetings of the Harbor and Waterfront Committee since their activities are regularly reported to the Harbormaster.

7.1.2 Assistant Harbormaster(s)

Assistant Harbormasters shall serve without salary and are to serve only in certain designated areas of the Town's waters. Their function is only to assist the Harbormaster, and to keep him informed of any problems or any controversy in their area. The Harbormaster shall be appointed by the Board of Selectmen and shall serve in that capacity until discharged by the Board of Selectmen or until resignation.

7.2 Training

Within eighteen months of his/her employment, the Harbormaster shall successfully complete the State Harbormaster Association's Training course at the expense of the Town. Failure to pass the course for any reason shall result in his/her termination and discharge by the Board of Selectmen, after notice and hearing.

7.3 Carrying a Weapon

Even though the Harbormaster may hold a valid permit to carry a weapon, he/she shall not do so in carrying out his/her duties until he/she has completed the Criminal Justice Academy training course (providing for power of arrest as well as permit for carrying a weapon) and unless he or she shall have received written approval from the Board of Selectmen to make arrests and to carry a weapon.

7.4 The salary of the Harbormaster and Deputy Harbormaster(s) shall be determined by the Board of Selectmen.

7.5 Management

The Harbormaster shall manage the Floats, Docks, Ramps, Moorings and Landings that are owned by the Town and shall make recommendations regarding their operation, use and maintenance to the Committee.

7.6 Meetings

The Harbormaster shall regularly attend meetings of the Harbor and Waterfront Committee, but shall not be a member of the Committee. He shall keep the Committee fully informed of all his activities, problems encountered, solutions affected, and activities which have required his special attention. He shall also provide information on matters pertaining to the committee's duties and responsibilities.

7.7 Records

The Harbormaster shall maintain a record for five years in which he shall record all complaints received (both written and oral), the date and time received, the response made to the complaint, and the date and time of such response.

Section 8 RULES AND REGULATIONS

8.1 Operation of Vessels/Rules and Regulations

- 8.1.1 It shall be unlawful to operate a vessel in the waters of Harpswell so as to endanger persons or property.
- 8.1.2 It shall be unlawful to operate a vessel in a manner which creates excessive wake or wake-wash.
- 8.1.3 It shall be unlawful to establish or maintain an unregistered mooring.
- 8.1.4 It shall be unlawful to park a motor vehicle so as to block or restrict access to a Town Landing.
- 8.1.5 It shall be unlawful to abandon a vessel within the waters or upon the shoreline of Harpswell.
- 8.1.6 It shall be unlawful to abandon lobster, crab and shellfish cars or crates within the waters of Harpswell.
- 8.1.7 It shall be unlawful to abandon a mooring within the waters of Harpswell.
- 8.1.8 It shall be unlawful to rent moorings or slips, in facilities not existing at the time this Ordinance is adopted, without providing for one parking space for each mooring or slop rented. Parking spaces shall be provided for expansions of existing facilities. Parking spaces and aisle dimensions shall be as specified in the Town's Site Plan Review Ordinance regarding parking layout and design.
- 8.1.9 It shall be unlawful to refuse to obey any lawful Order of the Harbormaster.
- 8.1.10 It shall be unlawful for any person or persons to establish or maintain a year round residence on any type of vessel within waters of Harpswell unless the vessel has established access to property with shoreline on the waters of Harpswell which is equipped with waste pump-out facilities and the vessel contains sewage holding tankage attached to each marine toilet and the vessel's sewage system is not equipped with "Y" valves to permit overboard discharge.
- 8.1.11 It shall be unlawful to leave a vessel at a Town Wharf, Dock or Float for a period exceeding thirty (30) minutes without the permission of the Harbormaster; provided, however, that the Board of Selectmen may, after notice and hearing, adopt rules and regulations governing the use of a Town Wharf, Dock or Float, including, without limitation, rules and regulations that establish a systematic approach for the Harbormaster to grant permission for vessels to exceed the thirty (30) minute tie-up limit and a fee schedule related to the same.
- 8.1.12 The Harbormaster may remove, or cause to be removed, to the Transfer Station or other location designated in writing by the Board of Selectmen any unattended dinghy/skiff/vessel obstructing use of a Town Wharf, Dock or Float after due effort has been made by the Harbormaster to notify the owner or operator of said dinghy/skiff/vessel of the violation. Any dinghy/skiff/vessel filled with water to the seat level shall be considered unattended. The vessel owner shall be responsible for all associated costs of removal.

8.1.13 The Harbormaster shall have the general authority to supervise use of the Town Wharf, Dock or Float and shall be responsible for the neat and orderly use of the Town Wharf, Dock or Float and for the assignment of any float space.

8.2 Violation of Ordinance

Except as provided in Title 38 M.R.S.A. § 13, as may be amended from time to time, a violation of this Ordinance shall be a civil violation and may be prosecuted and relief, fees, fines and penalties granted and assessed pursuant to the provisions of Title 30-A M.R.S.A. § 4452, as may be amended from time to time. For purposes of this Section, each day that a violation continues shall be considered a separate offense.

8.3 Enforcement of Ordinance

The Harbormaster shall have the authority and responsibility to enforce this Ordinance and the provisions of Title 38, Chapter 1, Subchapter 1, as may be amended from time to time. All law enforcement officers of the State of Maine, including Harbormasters and their deputies, shall have the authority to enforce this Ordinance and, in the exercise thereof, shall have the authority to stop and board any vessel found in violation of this Ordinance. It shall be unlawful for any operator of such vessel to fail to stop upon request of such officer and violation shall be punishable as provided in Title 38 M.R.S.A. § 282, as may be amended from time to time.

8.4 Appeals

Any person aggrieved by a decision of the Harbormaster may appeal the decision to the Committee within thirty (30) days of the Harbormaster's decision. Decisions of the Committee, when acting as a Board of Appeals, may be appealed to the Board of Selectmen within thirty (30) days of the Committee's decision. Decisions of the Board of Selectmen may be appealed to Superior Court within thirty (30) days of the Board of Selectmen's written decision.